

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWIN WALKER,	:	CIVIL ACTION
	:	NO. 01-578
Plaintiff,	:	
	:	
v.	:	
	:	
MICHAEL FISHER, et al.,	:	
	:	
Defendants.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

JANUARY 21, 2005

Plaintiff, Edwin Walker, filed this action pro se against certain state judges, investigators, prosecutors, and witnesses involved in a criminal prosecution that resulted in plaintiff's conviction for controlled substances offenses. Plaintiff alleges constitutional violations, for which he brought suit under 42 U.S.C. § 1983. Specifically, he alleges that each judge issued an arrest warrant based upon fabricated evidence and failed to investigate whether other defendants in this matter conspired to infringe upon his constitutional rights. Plaintiff further alleges that the police falsely arrested and imprisoned him, planted incriminating evidence in his home and searched his home pursuant to an invalid search warrant, that the witnesses gave perjured testimony against him, and that the prosecutors knowingly permitted the witnesses to commit perjury.

All of the defendants in this action have been dismissed except James Avery, an officer allegedly present during plaintiff's arrest (hereinafter "Agent Avery"). All of plaintiff's claims have also been dismissed except his Section 1983 claim for excessive force against Agent Avery. Presently before the Court is Agent Avery's motion for summary judgment in which he argues that, based upon the uncontested material facts before the Court, he is entitled to judgment as a matter of law because plaintiff's claim is barred by the applicable statute of limitations. Also before the Court is plaintiff's motion for summary judgment in which he argues that several of his constitutional rights have been violated. For the reasons that follow, Agent Avery's motion for summary judgment will be granted, and plaintiff's motion for summary judgment will be denied.

I. BACKGROUND

Plaintiff was arrested on March 13, 1998 after police entered and searched his home pursuant to a search warrant. Plaintiff was charged with controlled substance offenses and was convicted on those charges on September 27, 1999 in the Luzerne County Court of Common Pleas. On May 10, 1999, plaintiff filed a motion to proceed in forma pauperis in this Court. On May 12, 1999, this Court issued an Order denying plaintiff's motion to

proceed in forma pauperis. On February 5, 2001, approximately two years and eleven months after the date of his arrest and the alleged excessive force, plaintiff filed the instant complaint against several defendants.

After the defendants separately filed several motions to dismiss, the scope of the case narrowed to an excessive force claim against Agent Avery. Agent Avery filed an amended answer to include his statute of limitations defense, and subsequently filed a motion for judgment on the pleadings, asserting that plaintiff's claim was time-barred. The Court denied Agent Avery's motion after considering plaintiff's allegation that he failed to file a complaint within the limitations period because of certain "tricks" of the defendants. See Order of February 24, 2004 (doc. no. 63). The Court extended the scheduling deadlines to permit discovery on the statute of limitations issue. After discovery, including a deposition of plaintiff, Agent Avery filed the instant motion for summary judgment.

II. DISCUSSION

A. Standard for Summary Judgment

When confronted with cross-motions for summary judgment "the court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." 10A

Charles A. Wright, Arthur R. Miller & Mary Kane, Federal Practice and Procedure § 2720 (1998). Thus, with respect to each party, summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

B. Analysis of Defendant's Motion for Summary Judgment

Plaintiff's Section 1983 claim is subject to Pennsylvania's statute of limitations governing personal injury actions. See Owens v. Okure, 488 U.S. 235, 249-50 (1989); Garvin v. City of Philadelphia, 354 F.3d 215, 220 (3d Cir. 2003). Pennsylvania's statute of limitations for personal injury actions is two years. See 42 Pa. Cons. Stat. Ann. § 5524(7). Thus, for plaintiff's Section 1983 claim to be timely, he must have filed this lawsuit within two years of the date his cause of action accrued.

Although state law governs the limitations period for Section 1983 claims, federal law determines the date plaintiff's cause of action accrued. Montgomery v. De Simone, 159 F.3d 120, 126 (3d Cir. 1998). Furthermore, "[i]t is axiomatic that under federal law, which governs the accrual of section 1983 claims, the limitations period begins to run from the time when the

plaintiff knows or has reason to know of the injury which is the basis of the section 1983 action." Id. (citations and internal quotation marks omitted).

In the present case, plaintiff's complaint arises from injuries he suffered on the date of his arrest. Plaintiff alleges that Agent Avery illegally entered his house on March 13, 1998 and used excessive force when arresting him. Because plaintiff knew, or should have known, of the injuries giving rise to his excessive force claim on March 13, 1998, plaintiff's claim accrued on March 13, 1998. See Jackson v. Nicoletti, 875 F. Supp. 1107, 1108-09 (E.D. Pa. 1994) (citing Sandutch v. Muroski, 684 F.2d 252, 254 (3d Cir. 1982), in support of its conclusion that a plaintiff's claim for excessive force during arrest accrued on date of arrest); cf. Torres v. McLaughlin, 163 F.3d 169, 176 (3d Cir. 1998) ("[F]or statute of limitations purposes, a § 1983 claim for false arrest accrues on the date of the plaintiff's arrest . . ."). Plaintiff filed his complaint on February 5, 2001, approximately two years and eleven months after his cause of action accrued. Therefore, plaintiff's claim is barred by the statute of limitations.

In addition, plaintiff's motion to proceed in forma pauperis, which he filed within the limitations period, on May 10, 1999, and which the Court denied on May 12, 1999, did not constitute a filing that satisfies the statute of limitations

period. Under the Federal Rules of Civil Procedure, "a civil action is commenced by filing a complaint with the court." Fed. R. Civ. P. 3; see also Talley v. Pa. Liquor Control Bd., Civ. A. No. 85-4094, 1986 WL 4534, at *2 (E.D. Pa. Apr. 16, 1986) (explaining that "[t]he fact that plaintiff moved to proceed in forma pauperis before the expiration of the 90 day period does not save the action" from being time-barred). At best, the statute of limitations was tolled for the two days that the in forma pauperis motion was pending before it was denied on May 12, 1999. See, e.g., Scary v. Phila. Gas Works, 202 F.R.D. 148, 150-52 (E.D. Pa. 2001) (McLaughlin, J.) (holding that "the filing of an ifp [in forma pauperis] motion with a complaint tolls the statute of limitations until the ifp motion is decided"). Therefore, under Federal Rule of Civil Procedure 3 and the established caselaw, plaintiff's claim is time-barred notwithstanding his May 10, 1999 in forma pauperis motion.¹

Although plaintiff filed his complaint outside the limitations period, the remaining question is whether his delay is excusable under the equitable tolling doctrine. Under this

¹ Although plaintiff stated in his deposition that his February 5, 2001 time-barred complaint was an "ongoing complaint" (Apr. 23, 2004 Dep. of Pl. at 19-21), i.e., that it related to his May 10, 1999 in forma pauperis motion, the docket in his May 10, 1999 case reveals that plaintiff never filed or served a complaint in that case. Thus, the first time plaintiff commenced an action for statute of limitations purposes was February 5, 2001, outside the limitations period.

doctrine, "plaintiffs may sue after the statutory time period for filing a complaint has expired if they have been prevented from filing in a timely manner due to sufficiently inequitable circumstances." Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 240 (3d Cir. 1999). The plaintiff bears the burden of proffering facts that support equitable tolling. See Byers v. Follmer Trucking Co., 763 F.2d 599, 600 (3d Cir. 1985).

Plaintiff's Response to Defendant's Motion for Summary Judgment (doc. no. 73) does not address the statute of limitations issue; rather, as discussed below, it reasserts certain discovery and substantive arguments already ruled upon by this Court. In addition, when viewing the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits," the record reveals only plaintiff's conclusory allegation that the defendants' and their lawyers' "tricks" prevented him from filing a timely complaint. See Pl.'s Answers to Def. Avery's Mot. for J. on the Pleadings ¶ 4 (doc. no. 62), (Apr. 23, 2004 Dep. of Pl. at 7, 12, 13). These unsubstantiated allegations do not satisfy plaintiff's burden of proffering facts that demonstrate inequitable circumstances which would warrant tolling the statute of limitations.² Finally, in

² Plaintiff also stated in his response to Agent Avery's judgment on the pleadings that he "didn't know that his rights was [sic] being violated by the defendants until he came into the knowledge on April 12th, 1999, the tricks of the defendants." Pl.'s Answers to Def. Avery's Mot. for J. on the Pleadings ¶ 4

response to being asked why he waited until February 5, 2001 to file his complaint, plaintiff stated, "Why I waited? Because I considered it to be a continued violation of my constitutional rights." (Apr. 23, 2004 Dep. of Pl. at 19-21). To the extent plaintiff argues a continuing violation of his rights, a relatively common ground for equitable tolling in the employment discrimination context, plaintiff's argument fails because the alleged excessive force was one discrete act that put plaintiff on notice to assert his rights. See Rush v. Scott Specialty Gases, Inc., 113 F.3d 476, 481 (3d Cir. 1997) (explaining that an isolated act cannot constitute a continuing violation). In sum, then, plaintiff has not satisfied his burden of demonstrating facts that would justify equitable tolling of the statute of limitations.

C. Analysis of Plaintiff's Motion for Summary Judgment

Plaintiff's motion for summary judgment states, in conclusory fashion, that he is entitled to summary judgment based on, inter alia, "the use of excessive force by . . . Agent James Avery." Pl.'s Mot. for Summ. J. ¶ 2 (doc. no. 71). The balance

(doc. no. 62). The law is clear, however, that plaintiff's cause of action on his excessive force claim accrued on the date of his arrest and the alleged excessive force: March 13, 1998. Moreover, a plaintiff's claim "accrues upon knowledge of the actual injury, not that the injury constitutes a legal wrong." Bierequ v. Ashcroft, 259 F. Supp. 2d 342, 355 n.12 (D.N.J. 2003).

of plaintiff's motion reasserts various due process violations allegedly committed by the state judges, investigators, prosecutors, and witnesses involved in the criminal prosecution that resulted in plaintiff's conviction. Plaintiff also adds a new argument that The Honorable Jay C. Waldman, to whom plaintiff's case was initially assigned, committed an abuse of process by granting certain defendants' motion to dismiss in his Order of July 12, 2002 (doc. no. 17). All of these claims are outside the scope of this motion, given that the Court's Order of August 29, 2003 (doc. no. 41) limited plaintiff's claim against Agent Avery to one of excessive force. As already stated, plaintiff's excessive force claim against Agent Avery is barred by the applicable statute of limitations.

III. CONCLUSION

For the foregoing reasons, based upon the uncontested material facts before the Court, Agent Avery is entitled to judgment as a matter of law. Accordingly, Agent Avery's motion for summary judgment will be granted, and plaintiff's motion for summary judgment will be denied. An appropriate order follows.

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Defendants.	:	

ORDER

AND NOW, this **21st**, day of **January, 2005**, upon consideration of the Motion for Summary Judgment filed by Defendant James Avery (doc. no. 68), and Plaintiff's response thereto, it is hereby **ORDERED** that the Motion is **GRANTED**.

IT IS FURTHER ORDERED that, upon consideration of the Motion for Summary Judgment filed by Plaintiff (doc. no. 71), the Motion is **DENIED**.

AND IT IS FURTHER ORDERED that Judgment is entered in favor of Defendant James Avery and against Plaintiff.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.